

**IN THE INCOME TAX APPELLATE TRIBUNAL
DEHRADUN CIRCUIT BENCH: DEHRADUN**

**BEFORE,
SHRI M. BALAGANESH, ACCOUNTANT MEMBER
AND
SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER**

ITA No.167 to 172/DDN/2019
(Assessment Years: 2008-09 to 2013-14)

Shri Krishna Educational Trust, Rattan Dera Road, Kurukshetra Haryana-136 118 PAN-AAATS 3624C	Vs.	Dy.CIT Central Circle Dehradun
(Appellant)		(Respondent)

Appellant By	Sh. Salil Kapoor, Adv. Sh. Sumit Lalchandani, Adv.
Respondent by	Sh. N.S.Jangpangi, CIT-DR
Date of Hearing	13/12/2023
Date of Pronouncement	22/12/2023

ORDER

PER BENCH:

1. All these appeals of the Assessee arises out of the orders of the Learned Commissioner of Income Tax (Appeals)-IV, Kanpur [hereinafter referred to as 'Ld. CIT(A)], dated 31/07/2019 against the orders passed by Deputy Commissioner of Income Tax, Central Circle, Dehradun for Assessment Years 2008-09, 2009-10, 2010-11, 2011-12, 2012-13 & 2013-14 respectively.
2. Identical issues involved in these appeals and hence they are taken up together and disposed of by this common order.

3. Though the assessee has raised several grounds of appeal both on legal issues as well as on merits, we find that the preliminary legal ground raised by the assessee is that the search assessment was framed pursuant to the approval granted u/s 153D of the Act by the Additional CIT, Central Circle, Range Meerut in a mechanical manner and accordingly, the entire search assessment deserves to be quashed. We deem it fit to address this preliminary ground first.

4. We have heard the rival submissions and perused the materials available on record. The assessee is a public charitable trust running an educational institution under the name of Shri Krishna Institute of Technology and Shri Krishna Institute of Polytechnic. The assessee trust was granted registration on 09.12.1996. The trust has been approved for exemption u/s 10(23C)(vi) of the Act by the Chief Commissioner of Income Tax, Panchkula vide his order dated 30.10.2008 effective from AY 2008-09. The educational institutions received income by way of fees and other charges from the students. The surplus income and exemption claimed by the assessee trust for AY as under:-

AY	Income applied in Rs.	Exemption of income over expenditure in Rs.
2009-10	80190691	1774448
2010-11	83634103	(-) 10605247
2011-12	93636720	(-) 5335257
2012-13	114575871	5015478
2013-14	10513931	1146780

5. A search and seizure operations action u/s 132 of the Act was carried out in the premises of Shri Sanjay Bansal and his concerns on 26.04.2012 in DBIT Group of cases. The premises of assessee society was also covered under the search. Accordingly, the assessee's case was

centralised to Central Circle for effective coordination in the search assessment proceedings. An order u/s 127 of the Act dated 05.02.2013 was passed by CIT, Kurukshetra to transfer the case of the assessee to Central Circle, Dehradun. A notice u/s 153A(1)(a) of the Act was issued on 17.03.2014 for all the assessment years. In response to the said notice, the assessee furnished the return of income on 31.03.2014 declaring total income of Rs. Nil. The search assessments were completed u/s 153A read with section 143(3) of the Act on following dates:-

2008-09	30.03.2015
2009-10	30.03.2015
2010-11	30.03.2015
2011-12	30.03.2015
2012-13	30.03.2015
2013-14	30.03.2015

6. The Id AR placed on record a copy of letter dated 30.03.2015 addressed by the Id AO to the Id Addl. CIT, Central Circle, Meerut forwarding the draft assessment order in the case of Shri Sanjay Bansal, Uttrakhand Uthan Samiti, Wali Gram Udhog Sansthan and Shri Krishna Educational Trust for the AYs 2007-08 to 2013-14 for seeking approval u/s 153D of the Act from the Id Addl. CIT. This is enclosed at page 226 of the factual paper book filed by the assessee. We find that the Id Addl. CIT, Central Circle range Meerut had accorded his approval for the draft assessment order on 30.03.2015 for 21 assesseees for various AYs on the very same day i.e. 30.03.2015. We find that the Id Addl.CIT granted approval of the draft assessment orders u/s 153D of the Act for 16 assesseees for various AYs in respect of assessments to be completed u/s 153A of the Act and for 5 assesseees in respect of assessments to be completed u/s 153C of the Act. These approval papers u/s 153D of the Act

dated 30.03.2015 granting approval for 21 assessees for various AYS including the assessee before us herein are enclosed in pages 227 to 228 of the factual paper book us.

7. The Ld. AR before us had raised a preliminary objection that the said statutory approval granted by the Ld. Addl. Commissioner u/s 153D of the Act enabling the Ld. AO to complete the search assessment, was a mere mechanical approval without due application of mind on the part of the Ld. Addl. CIT. Further, the Ld. AR also submitted that the meaning of 'approval' as contemplated u/s 153D of the Act is that the JCIT/Addl. CIT is required to verify the issues raised by the Ld. AO in the draft assessment order and apply his mind and ascertain whether the entire facts have been properly appreciated by the Ld. AO. The said approval proceedings is a quasi judicial function to be performed by the Ld. Addl. CIT based on sound reasoning on due examination of the seized documents, replies filed by the assessee and the draft assessment order of the Ld. AO. Thus, it is bounden duty of the Ld. JCIT/Addl. CIT to exercise this power by applying his judicious mind. The Ld. AR vehemently argued that the 28 draft assessment orders for 4 assessees were sent for approval by the Ld. AO in Dehradun to the Ld. Addl. CIT in Meerut on 30.03.2015 and the Ld. Addl. CIT had granted approval for all the cases on the very same day, i.e., on 30.03.2015.

8. The Id AR reiterated the fact that 95 draft assessment orders u/s 153A of the Act were approved by the Addl. CIT u/s 153D of the Act and 35 draft assessment orders were approved u/s 153C of the Act on the single day i.e. the day on which the draft assessment orders were forwarded to the Id Addl. CIT by the Id AO. Based on this, the Ld. AR submitted that the Ld. Addl. CIT had granted approval by devoting very few minutes for each case in a mechanical manner u/s 153D without due

application of mind. Moreover, the approval letter granted u/s 153D by the Ld. Addl. CIT for all the seven assessment years enclosed in pages 227 to 228 of the paper book, clearly states that the draft assessment orders per se were placed by the Ld. AO before the Ld. Addl. CIT only on 30.03.2015 and they were approved on the very same day. Accordingly, he pleaded that this type of approval cannot be treated as a valid approval contemplated u/s 153D of the Act. Further, the Ld. AR submitted that a single approval was granted by the Ld. Addl. CIT u/s 153D of the Act for all assessment years put together instead of granting approval for each of the assessment years separately as contemplated in the section. Accordingly, the Ld. AR argued that the entire search assessment framed in the hands of the assessee u/s 153A r.w.s. 143(3) of the Act dated 30.03.2015 for AYS 2007-08 to 2013-14 (i.e., the years under consideration) required to be quashed as void ab initio. In support of this argument, the Ld. AR placed heavy reliance on the decision of the *Hon'ble Orissa High Court in ITA Nos.39 to 45 of 2022 dated 15.03.2023 in the case ACIT, Circle 1(2), Bhubaneswar vs. M/s Serajuddin & Co.* and the decision of the Hon'ble Allahabad High Court in the case of PCIT vs. Subodh Aggarwal in Income-tax Appeal No.86/2022 dated 12.12.2022.

9. Per contra, the Ld. DR vehemently argued that the role of Addl. CIT, Central Range is totally different from the role of an Addl. CIT in the normal range. He argued that in a Central Range, the Ld. Addl. CIT is involved in the search assessment proceedings right from the time of receipt of appraisal report from the Investigation Wing and is involved with the Ld. AO from time to time while issuing various questionnaires to the assessee. The Ld. Addl. CIT in Central Range also examine the seized documents in detail immediately after receipt of the appraisal report and

provides able assistance to the Ld. AO about the interpretation of the said seized documents while issuing questionnaires to assessee, examining the replies filed by the assessee and drawing conclusions thereon. Hence, it is very easy for the Ld. Addl. CIT to grant approval of the draft assessment order on the same day since he is involved with the assessment proceedings right from the inception. Accordingly, he argued that the objection raised by the Ld. AR has no force.

10. We find, as per the scheme of the Act, for framing search assessments, the Ld. AO can pass the search assessment order u/s 153A or u/s 153C of the Act only after obtaining prior approval of the draft assessment order and the conclusions reached thereon from the Ld. Addl.CIT in terms of section 153D of the Act. This is a mandatory requirement of law. The said approval granting proceedings by the Ld. Addl.CIT is a quasi judicial proceeding requiring application of mind by the Ld. Addl.CIT judiciously. In order to ensure smooth implementation of the aforesaid provisions, in consonance with the true spirit of the scheme of the Act, it is the bounden duty of the Ld. AO to seek to place the draft assessment order together with copies of the seized documents before the Ld. Addl.CIT well in time much before the due date of completion of search assessment. The Ld. Addl.CIT is supposed to examine the seized documents, questionnaires raised by the Ld. AO on the assessee seeking explanation of contents in the seized documents, replies filed by the assessee in response to the questionnaires issued by the Ld. AO and the conclusions drawn by the Ld. AO vis- à-vis the said seized documents after considering the reply of the assessee. All these functions, as stated earlier, are to be performed by the Ld. Addl. CIT in a judicious way after due application of mind. Even though as vehemently argued by the Ld. CIT-DR, the Addl. CIT is involved with the search assessment proceedings

right from the time of receipt of appraisal report from the Investigation Wing, still, the Ld. Addl.CIT, while granting the approval u/s 153D has to independently apply his mind de hors the conclusions drawn either by the Investigation Wing in the appraisal report or by the Ld. AO in the draft assessment order. The copy of the appraisal report submitted by the Investigation Wing to the Ld. AO and Ld. Addl.CIT are merely guidance to the Ld. AO and are purely internal correspondences on which the assessee does not have any access. Moreover, the Act mandates the Ld. AO to frame the assessment after getting prior approval from Ld. Addl. CIT u/s 153D of the Act. The Ld. Addl. CIT getting involved in the search assessment proceedings right from inception does not have any support from the provisions of the Act as nowhere the Act mandates so. The scheme of the Act mandates due application of mind by the Ld. AO to examine the seized documents independently de hors the appraisal report of the Investigation Wing and seek explanation/clarifications from the assessee on the contents of the seized documents. When the scheme of the Act provides for a leeway to both the Ld. AO as well as the Ld. Addl. CIT to even ignore the conclusions drawn in the appraisal report by the Investigation Wing and take a different stand in the assessment proceedings, the fact of Ld. Addl.CIT getting involved in the search assessment proceedings right from the receipt of copy of appraisal report, as argued by the Ld. DR, has no substance. In other words, irrespective of the conclusions drawn in the appraisal report by the Investigation Wing, both the Ld. AO and the Ld. Addl.CIT are supposed to independently apply their mind in a judicious way before drawing any conclusions on the contents of the seized documents while framing the search assessments. The law provides only the Ld. AO to frame the assessment, but, certain checks and balances are provided in the Act by

conferring powers on the Ld. Addl.CIT to grant judicious approval u/s 153D of the Act to the draft assessment orders placed by the Ld. AO.

11. Let us now examine whether in the aforesaid background of the scheme of the Act, whether the approval in terms of section 153D of the Act has been granted by the Ld. Addl.CIT in a judicious way after due application of mind or not, in the instant case.

12. We have gone through the approval granted by the Ld. Addl.CIT on 30.03.2015 u/s 153D of the Act. The said letter clearly states that a letter dated 30.03.2015 was filed by the Ld. AO before the Ld. Addl.CIT seeking approval of draft assessment order u/s 153D of the Act. The Ld. Addl. CIT has accorded approval for the said draft assessment orders on the very same day i.e., on 30.03.2015 for seven assessment years in the case of the assessee and for various assessment years in the case of various assessees (i.e. 20 assesses and 123 assessment orders excluding the assessee). In any event, whether is it humanly possible for an approving authority like the Ld. Addl. CIT to grant judicious approval u/s 153D of the Act for 21 cases for various assessment years on a single day is the subject matter of dispute before us. Further, section 153D of the Act provides that approval has to be granted for each of the assessment year whereas, in the instant case, the Ld. Addl.CIT has granted a single approval for all assessment years put together. We find that the reliance placed by the Ld. AR on the decision of the Hon'ble Orissa High Court in the case of ACIT, Circle 1(2), Bhubaneshwar vs. M/s Serajuddin & Co. in ITA Nos. 39 to 45 of 2022 dated 15.03.2023 is well founded. The question before the Hon'ble Orissa High Court is as under:-

"Whether on the facts and circumstances the ITAT was correct in holding that the approving authority has not applied his mind for giving approval u/s 153D?"

13. In the case before the Hon'ble Orissa High Court, the approval of draft assessment orders was placed by the Ld. AO before the Ld. Addl.CIT on 27/29.12.2010 for seven assessment years. The approval was granted by the Ld. Addl. Commissioner for seven assessment years u/s 153D of the Act on 30.12.2010 by merely saying that the draft orders submitted by the officer in the above case for the seven assessment years are hereby approved. The Hon'ble Orissa High Court took note of this fact and quashed the search assessment and decided the issue in favour of the assessee by holding as under:-

"22. As rightly pointed out by learned counsel for the Assessee there is not even a token mention of the draft orders having been perused by the Additional CIT. The letter simply grants an approval. In other words, even the bare minimum requirement of the approving authority having to indicate what the thought process involved was is missing in the aforementioned approval order. While elaborate reasons need not be given, there has to be some indication that the approving authority has examined the draft orders and finds that it meets the requirement of the law. As explained in the above cases, the mere repeating of the words of the statute, or mere "rubber stamping" of the letter seeking sanction by using similar words like 'seen' or 'approved' will not satisfy the requirement of the law. This is where the Technical Manual of Office Procedure becomes important. Although, it was in the context of Section 158BG of the Act, it would equally apply to Section 153D of the Act. There are three or four requirements that are mandated therein, (i) the AO should submit the draft assessment order "well in time". Here it was submitted just two days prior to the deadline thereby putting the approving authority under great pressure and not giving him sufficient time to apply his mind; (ii) the final approval must be in writing; (iii) The fact that approval has been obtained, should be mentioned in the body of the assessment order.

23. In the present case, it is an admitted position that the assessment orders are totally silent about the AO having written to the Additional CIT seeking his approval or of the Additional CIT having granted such

approval. Interestingly, the assessment orders were passed on 30th December 2010 without mentioning the above fact. These two orders were therefore not in compliance with the requirement spelt out in para 9 of the Manual of Official Procedure.

24. The above manual is meant as a guideline to the AOs. Since it was issued by the CBDT, the powers for issuing such guidelines can be traced to Section 119 of the Act. It has been held in a series of judgments that the instructions under Section 119 of the Act are certainly binding on the Department. In Commissioner of Customs v. Indian Oil Corporation Ltd. 2004 (165) E.L.T. 257 (S.C.) the Supreme Court observed as under:

"Despite the categorical language of the clarification by the Constitution Bench, the issue was again sought to be raised before a Bench of three Judges in Central Board of Central Excise, Vadodara v. Dhiren Chemicals Industries: 2002 (143) ELT 19 where the view of the Constitution Bench regarding the binding nature of circulars issued under Section 37B of the Central Excise Act, 1944 was reiterated after it was drawn to the attention of the Court by the Revenue that there were in fact circulars issued by the Central Board of Excise and Customs which gave a different interpretation to the phrase as interpreted by the Constitution Bench. The same view has also been taken in Simplex Castings Ltd. v. Commissioner of Customs, Vishakhapatnam 2003 (5) SCC 528. The principles laid down by all these decisions are: (1) Although a circular is not binding on a Court or an assessee, it is not open to the Revenue to raise the contention that is contrary to a binding circular by the Board. When a circular remains in operation, the Revenue is bound by it and cannot be allowed to plead that it is not valid nor that it is contrary to the terms of the statute.

(2) Despite the decision of this Court, the Department cannot be permitted to take a stand contrary to the instructions Issued by the Board.

(3) A show cause notice and demand contrary to existing circulars of the Board are ab initio bad

(4) It is not open to the Revenue to advance an argument or file an appeal contrary to the circulars."

25. For all of the aforementioned reasons, the Court finds that the ITAT has correctly set out the legal position while holding that the requirement of prior approval of the superior officer before an order of assessment or reassessment is passed pursuant to a search operation is a mandatory requirement of Section 153D of the Act and that such approval is not meant to be given mechanically. The Court also concurs with the finding

of the ITAT that in the present cases such approval was granted mechanically without application of mind by the Additional CIT resulting in vitiating the assessment orders themselves.

26. The question of law framed is therefore answered in the affirmative i.e., in favour of the Assessee and against the Department.

27. The appeals are accordingly dismissed, but in the circumstances, with no order as to costs."

14. Further, we find that similar view was taken by the Hon'ble Allahabad High Court in the case PCIT vs. Subodh Aggarwal in Income-tax Appeal No.86/2022 dated 12.12.2022. In this case, the draft assessment order was placed for approval before the Ld. Addl. CIT on 31.12.2017. The approval u/s 153D was granted by the Ld. Addl. CIT on 31.12.2017. The final assessment order was passed by the Ld. AO on 31.12.2017. The time limit for completion of search assessment was 31.12.2017. 38 cases were approved by the Ld. Addl.CIT u/s 153D of the Act on 31.12.2017. In this background, the Hon'ble Allahabad High Court held as under:-

"The submission is that the substantial question of law which arises for consideration before this Court is about the justification of the act of the Tribunal in ignoring the findings recorded by the Assessing Officer and setting aside the assessment order on the sole ground of defect in the approval to the draft assessment order granted by the competent Approving Authority. Learned counsel for the Assessee, however, defended the order of the tribunal for the reasoning given therein.

Considering the submissions of the learned counsel for the parties and having perused the order of the Tribunal, in view of the undisputed facts before us about the manner in which the approval to the draft assessment order was granted under Section 153D for the assessment proceedings, by a letter dated 31.12.2017 in 38 cases placed before the approving authority in a single day, we are required to examine as to whether a substantial question of law arises for consideration before us so as to admit the present appeal.

To answer the same, we are required to go through the relevant provisions of the Income Tax Act. Section 132 provides the procedure for search and seizure operations in consequence of the information in possession of the Income Tax Authorities. Section 153A prescribes

assessment in case of search or requisition. Section 153A provides that in the case of a person where a search is initiated under Section 132, the Assessing Officer shall issue notice to such person requiring him to furnish within such period, as may be specified in the notice, the return of income in respect of each assessment year falling within six assessment years (and for the relevant assessment year or years) referred to in clause (b), in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed and the provisions of this Act shall, so far as may apply accordingly as if such return were a return required to be furnished under Section 139.

Section 153D of the Act relevant for our purposes is to be noted

"Prior approval necessary for assessment in cases of search or requisition.

153D.-No order of assessment or reassessment shall be passed by an Assessing Officer below the rank of Joint Commissioner in respect of each assessment year referred to in clause (b) of [sub-section (1) of] section 153A or the assessment year referred to in clause (b) of sub-section (1) of section 153B, except with the prior approval of the Joint Commissioner.

Provided that nothing contained in this section shall apply where the assessment or reassessment order, as the case may be, is required to be passed by the Assessing Officer with the prior approval of the [Principal Commissioner or] Commissioner under sub-section (12) of section 144BA."

The Tribunal while quashing the assessment order had relied upon its earlier decision in Navin Jain and Others (Supra) wherein a detailed discussion has been made with regard to the requirement of prior approval of superior authority on the draft assessment order under Section 153D, before passing the assessment order by the Assessing Officer. It was noted that the word 'approval' though has not been defined in the Income Tax Act but the general meaning of the word 'approval' in Black's Law Dictionary, 6th Edition was to be seen. The decision of the Apex Court in Vijayadev Naval Kishore Bharatia vs. Land Acquisition Officer (2003) 5 SCC 83 wherein the distinction between Approving Authority and Appellate Authority was drawn, had been noted. The decision of the High Court of Gauhati in Dharampal Satyapal Ltd. vs. Union of India (2019) 366 ELT 253 (Gau.) has been noted to record that grant of approval means due application of mind on the subject matter approved which satisfies all the legal and procedural requirements. There is an exhaustive discussion on the requirement of prior approval under Section 153D of the Act and it was noted that the requirement of

approval cannot be treated as mere formality and the mandate of the Act that the Approving Authority has to act in a judicious manner by due application of mind in a manner of a quasi judicial authority, has been considered.

It was held therein that if an approval has been granted by the Approving Authority in a mechanical manner without application of mind then the very purpose of obtaining approval under Section 153D of the Act and mandate of the enactment by the legislature will be defeated. For granting approval under Section 153D of the Act, the Approving Authority shall have to apply independent mind to the material on record for "each assessment year" in respect of "each assessee" separately. The words 'each assessment year' used in Section 153D and 153A have been considered to hold that effective and proper meaning has to be given so that underlying legislative intent as per scheme of assessment of Section 153A to 153D is fulfilled. It was held that the "approval" as contemplated under 153D of the Act, requires the approving authority, i.e. Joint Commissioner to verify the issues raised by the Assessing Officer in the draft assessment order and apply his mind to ascertain as to whether the required procedure has been followed by the Assessing Officer or not in framing the assessment. The approval, thus, cannot be a mere formality and, in any case, cannot be a mechanical exercise of power.

It was noted that the obligations of the approval of the Approving Authority serves two purposes: (i) On the one hand, he has to apply his mind to ensure the interest of the revenue against any commission or negligence by the Assessing Officer in taxing right income in the hands of right person and in right assessment year. (ii) On the other hand, superior authority is also responsible and duty-bound to do justice with the tax-payer by granting protection against arbitrary or creating baseless tax liability on the assessee.

The Tribunal has further noted that the provisions contained in Sections 153A to Section 153D provide for separate notice to be given to assessee for assessment for each year as specified in Section 153A of the Act; the assessee has to file separate ITR for each year as specified in Section 153A of the Act; separate assessment orders are to be passed for each year as specified in Section 153A of the Act.

It was observed that this is an important concept mentioned in Section 153A of the Act, which is peculiar to the scheme of the said Section. Keeping in view of this basic fundamental features of Section 153A, if Section 153D is scrutinized, then, it would become manifest that an important phrase is employed in the text of Section 153D, which is "each assessment year". The reading of the provisions in Section 153A and 153D conjointly makes it clear that separate approval of draft assessment order for each year is to be obtained under Section 153D of the Income

Tax Act. In its erudite judgement with the discussion on the legislative intent of Section 153A to 153D and the meaning of the "approval" as defined in Black's Law Dictionary as also the decisions of the Apex Court in the case of Sahara India vs. CIT and Others (2008) 300 ITR 403 (SC) where the discussion on the requirement of prior approval of Chief Commissioner or Commissioner in terms of provision of Section 142(2A) of the Act had been made, it was noted that the Apex Court has held therein that the requirement of previous approval of the Chief Commissioner or Commissioner in terms of the said provision being an in-built protection against arbitrary or unjust exercise of power by the Assessing Officer casts a very heavy duty on the said high ranking authority to see that the approval envisaged in the section is not turned into an empty ritual. The Apex Court has held therein that the approval must be granted only on the basis of material available on record and the approval must reflect the application of mind to the facts of the case.

The above discussion made in the judgement of Tribunal dated 3.08.2021 in the case of Navin Jain Vs. Dy. C.I.T. (Supra) has been relied by the Tribunal, in the instant case, to arrive at the conclusion that the mechanical approval under Section 153D of the Act would vitiate the entire proceedings in the instant case.

For the reasoning given in the case of Navin Jain (Supra), as extracted in the impugned order passed by the Tribunal, as noted above, there cannot be any two opinion to the requirement of prior approval of the Joint Commissioner to the draft assessment order prepared by the Assessing Officer, as per the mandate of Section 153D of the Income Tax Act.

The approval of draft assessment order being an in-built protection against any arbitrary or unjust exercise of power by the Assessing Officer, cannot be said to be a mechanical exercise, without application of independent mind by the Approving Authority on the material placed before it and the reasoning given in the assessment order. It is admitted by Sri Gaurav Mahajan, learned counsel for the appellant-revenue that the approval order is an administrative exercise of power on the part of the Approving Authority but it is sought to be submitted that mere fact that the approval was in existence on the date of the passing of the assessment order, it could not have been vitiated. This submission is found to be a fallacy, in as much as, the prior approval of superior authority means that it should appraise the material before it so as to appreciate on factual and legal aspects to ascertain that the entire material has been examined by the Assessing Authority before preparing the draft assessment order. It is trite in law that the approval must be granted only on the basis of material available on record and the approval must reflect the application of mind to the facts of the case. The requirement of approval under Section 153D is pre-requisite to pass an order of assessment or re-assessment. Section 153D requires that the

Assessing Officer shall obtain prior approval of the Joint Commissioner in respect of "each assessment year" referred to in Clause (b) of sub-section (1) of Section 153A which provides for assessment in case of search under Section 132. Section 153A(1)(a) requires that the assessee on a notice issued to him by the Assessing Officer would be required to furnish the return of income in respect of "each assessment year" falling within six assessment years (and for the relevant assessment or years), referred to in Clause (b) of sub-section (1) of Section 153A. The proviso to Section 153A further provides for assessment of the total income in respect of each assessment year falling within such six assessment years (and for the relevant assessment year or years).

The careful and conjoint reading of Section 153A(1) and Section 153D leave no room for doubt that approval with respect to "each assessment year" is to be obtained by the Assessing Officer on the draft assessment order before passing the assessment order under Section 153A.

In the instant case, the draft assessment order in 38 cases, i.e. for 38 assessment years placed before the Approving Authority on 31.12.2017 was approved on same day i.e. 31.12.2017, which not only included the cases of respondentassessee but the cases of other groups as well. It is humanly impossible to go through the records of 38 cases in one day to apply independent to appraise the material before the Approving Authority. The conclusion drawn by the Tribunal that it was a mechanical exercise of power, therefore, cannot be said to be perverse or contrary to the material on record.

As the facts are admitted before us, the questions of law framed on the factual issues related to the findings recorded by the Assessing Officer are not open to agitate within the scope of the present appeal being in the nature of second appeal. No substantial question of law arises for consideration before us.

The Appeal is dismissed being devoid of merit."

15. Further, we find that similar issue has been addressed by the Hon'ble Delhi High Court in the case of PCIT vs. Anju Bansal in ITA 368/2023 order dated 13.07.2023 wherein, under similar circumstances, the Hon'ble Delhi High Court categorically held that statutory approval given by a quasi judicial authority without due application of mind as contemplated in section 153D of the Act would be fatal to the entire

search assessment proceedings. The relevant operative part of the said order is reproduced below:-

"12. This aspect was brought to the fore by the Tribunal in the impugned order. The Tribunal, thus, concluded there was a complete lack of application of mind, inasmuch as the ACIT, who granted approval, failed to notice the said error.

12.1 More particularly, the Tribunal notes that all that was looked at by the ACIT, was the draft assessment order.

13. In another words, it was emphasised that the approval was granted without examining the assessment record or the search material. The relevant observations made in this behalf by the Tribunal in the impugned order are extracted hereafter:

"17.1 However, in the present case, we have no hesitation in stating that **there is complete non-application of mind by the Learned Addl. CIT before granting the approval. Had there been application of mind, he would not have approved the draft assessment order, where the returned income of Rs.87,20,580/-, Similarly, when the total assessed income as per the AO comes to Rs. 16,69,42,560/-, the Addl. CIT could not have approved the assessed income at Rs. 1,65,07,560/- had he applied his mind. The addition of Rs. 15,04,35,000/- made by the AO in the instant case is completely out of the scene in the final assessed income shows volumes.**

17.2 Even the factual situation is much worse than the facts decided by the Tribunal in the case of Sanjay Duggal (supra). In that case, at least the assessment folders were sent whereas **in the instant case, as appears from the letter of the Assessing Officer seeking approval, he has sent only the draft assessment order without any assessment records what to say about the search material. As mentioned earlier, there are infirmities in the figures of original return of income as well as total assessed and the Addl. CIT while giving his approval has not applied his mind to the figures mentioned by the AO. Therefore, approval given in the instant case by the Addl. CIT, in our opinion, is not valid in the eyes of law. We, therefore, hold that approval given u/s 153D has been granted in a mechanical manner and without application of mind and thus it is invalid and bad in law* and consequently*

vitiated the assessment order for want of valid approval u/s 153D of the Act.

In view of the above discussion, we hold that the order passed u/s 153A r.w.s. 43(3) has to be quashed, thus ordered accordingly. The ground raised by the Assessee is accordingly allowed".

[Emphasis is ours]

14. In this appeal, we are required to examine whether any substantial question of law arises for our consideration.

15. Having regard to the findings returned by the Tribunal, which are findings of fact, in our view, no substantial question of law arises for our consideration. The Tribunal was right that there was absence of application of mind by the ACIT in granting approval under Section 153D. It is not an exercise dealing with a immaterial matter which could be corrected by taking recourse to Section 292B of the Act.

16. We are not inclined to interdict the order of the Tribunal."

16. In view of the aforesaid observations and respectfully following the judicial precedents relied upon hereinabove, we have no hesitation in holding that the approval u/s 153D of the Act has been granted by the Addl.CIT in the instant case before us in a mechanical manner without due application of mind, thereby making the approval proceedings by a high ranking authority, an empty ritual. Such an approval has neither been mandated by the provisions of the Act nor endorsed by the decisions of the Hon'ble Orissa High Court; Hon'ble Allahabad High Court and Hon'ble Delhi High Court referred to supra. Hence, we find lot of force in the arguments advanced by the Ld. AR in support of the additional ground raised for all assessment years under consideration before us. Accordingly, the Ground Nos. 5 & 6 raised by the assessee are hereby allowed.

17. Since, pursuant to the allowing of the ground No. 5 &6, the entire search assessments framed in the hands of the assessee is to be declared

illegal and bad in law, the other legal grounds and grounds on merits raised by the assessee and grounds on merits raised by the assessee for various assessment years need not be gone into as adjudication of the same would be merely academic in nature and, hence, they are left open.

16. In the result, all the appeals of the assessee are allowed

Order pronounced in the open court on 22nd December, 2023.

Sd/-
(YOGESH KUMAR U.S.,)
JUDICIAL MEMBER

Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

Dated: 22/12/2023
PK/AKK

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI
(Dehradun Circuit Bench, Dehradun)